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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 KEITH ALLEN LEWIS, SR.,)
10 Plaintiff,) No. C 03-5429 CRB (PR)
11 v.) ORDER
12 EDWARD ALAMEIDA, et al.,) (Doc # 48)
13 Defendant(s).)
14

15 On October 7, 2005, the court granted defendants' motion to dismiss for
16 failure to exhaust administrative remedies under 42 U.S.C. § 1997e(a) and
17 dismissed plaintiff's prisoner action without prejudice to refiling after exhausting
18 California's prison administrative process. A careful review of the record made
19 clear that plaintiff had not exhausted his retaliation claim before he filed suit.

20 On October 18, 2005, plaintiff filed a motion to alter/amend and stay
21 judgment, arguing, among other things, that he had recently filed an inmate appeal.
22 On October 25, 2005, the court denied the motion, noting that a "prisoner must
23 exhaust available administrative remedies before filing suit." Oct. 25, 2005 Order
24 at 1 (citing McKinney v. Carey, 311 F.3d 1198, 1199-01 (9th Cir. 2002))
25 (emphasis in original).

26 On November 8, 2005, plaintiff filed a notice of appeal and renewed his
27 motion to alter/amend and stay judgment, adding that prison officials had "screened
28 out" his inmate appeal. Plaintiff's motion (doc # 48) is DENIED. Plaintiff may

1 well have exhausted all available administrative remedies if his appeal has been
2 screened out, see, e.g., Ngo v. Woodford, 403 F.3d 620, 631 (9th Cir. 2005)
3 (holding that a prisoner has exhausted all available administrative remedies when
4 his first formal appeal was screened out as untimely and he was informed that the
5 decision could not be appealed except if he alleged that it was in fact timely), but
6 this simply means that he may now be free to file a new action, not that judgment
7 should be altered/amended and this action reinstated, cf. McKinney, 311 F.3d at
8 1199-01 (action must be dismissed without prejudice unless prisoner exhausted
9 available administrative remedies before he filed suit, even if prisoner exhausts
10 while the suit is pending).

11 SO ORDERED.

12 DATED: November 17, 2005



13 CHARLES R. BREYER
14 United States District Judge